



# U.S. DEPARTMENT of STATE

## Namibia

### Country Reports on Human Rights Practices - [2004](#)

Released by the Bureau of Democracy, Human Rights, and Labor  
February 28, 2005

Namibia is a multiparty, multiracial democracy. Sam Nujoma, the leader of the South West Africa People's Organization (SWAPO) and President since the country's independence in 1990, will step down at the end of his term in March 2005. On November 15 and 16, citizens elected Minister of Lands, Resettlement, and Rehabilitation Hifikepunye Pohamba to be the next President. International and domestic observers agreed the general elections were generally free and reflected the will of the electorate despite some irregularities; SWAPO won three quarters of the seats in the National Assembly. The judiciary was independent but at times inefficient.

The police, including the paramilitary Special Field Force (SFF), supervised by the Ministry of Home Affairs, and the Namibian Defense Force (NDF), supervised by the Ministry of Defense, shared responsibility for internal security. The Namibian Central Intelligence Service (NCIS) has responsibility for national security related intelligence inside and outside the country. Civilian authorities maintained effective control of the security forces. Some members of the security forces committed human rights abuses.

The market based economy was heavily dependent on mining, fish, and tourism; the population was 1.8 million. More than 50 percent of the working population was engaged in subsistence agriculture. The per capita income of approximately \$1,870 masked extreme disparity between the income levels of black citizens and white citizens, which resulted in large part from the pre independence apartheid regime; however, the living standards of black citizens continued to improve. White citizens and foreign interests still largely controlled ranching. Unemployment exceeded 30 percent and affected primarily the black majority. Government policies continued to promote equality through education, job creation, and promotion of entrepreneurial opportunities for the historically disadvantaged.

The Government generally respected the human rights of its citizens; however, there were serious problems in several areas. Security forces killed and abused citizens during arrests and detentions. Some security force members who committed abuses were arrested and tried; however, the Government did not take action in other cases. Problems with arbitrary arrest and lengthy pretrial detention continued. A large court backlog, due primarily to resource constraints, resulted in lengthy delays of trials. High level government officials continued to respond to criticism of ruling party and government policies with verbal abuse. There continued to be pressure on journalists who worked for government owned media outlets not to criticize the Government. Violence against women and children, including rape and child abuse, continued to be a serious problem. Women also continued to experience serious legal and cultural discrimination. Racial and ethnic discrimination and serious disparities in education, health, employment, and working conditions persisted, as did discrimination against indigenous persons. There were reports of forced labor, including by children. Child labor was a problem; however, the Government continued its efforts to end this practice. Unlike in previous years, there were no reports that Angolan Armed Forces (FAA) soldiers intimidated and abused civilians.

## RESPECT FOR HUMAN RIGHTS

### Section 1 Respect for the Integrity of the Person, Including Freedom From:

#### a. Arbitrary or Unlawful Deprivation of Life

There were no political killings by the Government or its agents; however, security forces killed two persons during the year. On July 15, a police officer shot and killed Francis Sikwai Musanza, who allegedly was fishing illegally. On December 16, police shot and killed Jeffrey Shalulu, who had escaped from Otjiwarongo police cells, where he was awaiting trial. No further information was available about either case.

During the year, the Prosecutor General declined to press charges against an NDF member who in 2003 shot and killed Mohamed Sawana.

There were no developments in the 2003 police beating of Alilo Ndungula, who subsequently died.

There were no further developments in 2002 killings by security forces.

Unexploded ordnance killed and injured several persons during the year. For example, on July 7, unexploded ordnance killed Dirk Jansen at Otjomuise. The police Explosive Ordinance Disposal Unit and NDF operational clearance teams participated in demining activities during the year.

b. Disappearance

There were no reports of politically motivated disappearances.

There were no developments, and none were expected, in the 2002 disappearance of Fransisco Chivela, who security forces detained on suspicion of being a "UNITA bandit."

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits such practices; however, security forces sometimes beat or otherwise abused persons, including persons held in custody.

Unlike in previous years, no prisoners alleged that they had been tortured.

Despite a police directive that prohibited the use of sjamboks (heavy leather whips), security forces continued to use them.

In May, Steven Visagie, who fled custody at the Walvis Bay Police Cells and subsequently was rearrested, charged in a media report that security forces used tear gas in cells "for no reason."

On August 31, police held down, kicked, and arrested four foreigners they reportedly mistook for thieves. The foreigners, who were released, did not press charges.

During the year, the Government took action against some security force members who abused persons in 2003. For example, a court martial convicted and fined the officer who abused one of the female NDF recruits who filed charges of mistreatment in July; the case of the other recruit was dismissed for lack of evidence. A court martial was scheduled for March 2005 to try NDF members who harassed and beat Beau Pietersen and Hatani Mao Eichab for refusing to remove their earrings.

The Prosecutor General declined to prosecute the NDF member who in 2003 allegedly shot Sonette Benson in the leg.

Paramilitary units also abused persons. In February, SFF members reportedly beat Theophilus Ambondo, allegedly for transporting maize meal in a government vehicle on the weekend.

On November 14, at Kayira-yira village, SFF members reportedly beat Lyasintu Mendosa before taking him to the Rundu police, who subsequently transported Mendosa to the hospital; on November 16, he was discharged from the hospital to appear in the Magistrate's Court on charges of possessing marijuana. No further information was available on the case.

There were no developments in the June 2003 case in which SFF members allegedly assaulted George Petrus.

During the year, media and human rights groups continued to report on the ongoing court cases that resulted from security forces responding with violence to secessionist attacks in 1999 (see Sections 1.d. and 1.e.). More than 100 related cases were pending at year's end.

During the year, some citizens of the Mafwe ethnic group complained of police harassment in the form of repeated interrogations about the 1999 secessionist attacks at Katima Mulilo (see Section 1.d.).

Unlike in previous years, there were no reports of intimidation and abuse of civilians in the northern border areas by FAA soldiers.

Unexploded ordnance continued to injure persons; however, there were no reports of injuries from landmines during the year (see Section 1.a.).

Conditions in prisons and military detention facilities were Spartan; however, they generally met international standards. There were incidents of overcrowding and poor maintenance. Victims of abuse were able to pursue legal remedies. The Ministry of Prisons and Correctional Services administered the country's prisons and jails and continued to work to improve conditions.

In January, Josef Kandjimba died in police custody; Kandjimba's family charged that his death resulted from police failure to take

him to a December 2003 medical checkup.

Female prisoners were held separately from male prisoners. The Government also made efforts to separate juvenile offenders from adult criminals, and there were separate facilities for child offenders in Windhoek and Mariental; however, in many rural areas, juveniles continued to be held with adults. There were several pilot programs that provided alternatives to incarceration for juvenile offenders. Pretrial detainees generally were held separately from convicted prisoners.

The Government continued to grant nongovernmental organizations (NGOs) regular access to prisons and prisoners. The International Committee for the Red Cross (ICRC) requested and received prison access.

#### d. Arbitrary Arrest or Detention

The Constitution prohibits arbitrary arrest or detention except in situations of national emergency; however, security forces at times did not observe these prohibitions.

The country's 10,000 member national police force (NAMPOL) is highly centralized with regional commands responsible to the Inspector General of Police, who reports to the Minister of Home Affairs. Approximately half of NAMPOL's overall complement is assigned to the SFF, a paramilitary unit made up primarily of combatants from the former People's Liberation Army of Namibia; SFF members were assigned to guard duty, checkpoints, and the maintenance of public order. NAMPOL lacked the resources, training, and personnel to consistently deter or investigate street crime.

The police continued to make use of a human rights training course and a human rights training manual designed by the Legal Assistance Center (LAC). At times security force members accused of committing abuses were arrested and tried in military courts or the civilian criminal justice system; however, in other cases, the Government did not take any action against those responsible for abuses.

Persons who were arrested must be informed of the reason for their arrest and must be brought before a magistrate within 48 hours of their detention. Those accused are entitled to defense by legal counsel of their choice, and those who cannot afford a lawyer are entitled to state provided counsel; however, in practice, many accused persons in remote and rural areas were not represented by counsel, primarily due to the lack of resources. Prisoners generally had access to legal counsel and family during regular visiting hours. Detainees had access to their lawyers prior to trial. There was a functioning bail system in place, and the LAC reported that it generally was observed except in rural areas, where persons often were unaware of their legal rights.

On January 2, police at an Ondangwa roadblock arrested Shefeni Daniel Linekela for being a suspected illegal immigrant. Linekela, who was detained for 5 days, was released without charge.

Under a state of emergency, the Constitution permits detention without trial, although the names of detainees must be published in the Government's gazette within 14 days, and their cases must be reviewed within 1 month by an advisory board appointed by the President.

During the 1999 state of emergency declared in response to Caprivi Liberation Army (CLA) attacks in Katima Mulilo, the security forces detained several hundred suspected CLA members and sympathizers, most of whom were released after 2 weeks. Trial proceedings began in October 2003; 120 suspects remained in detention at Grootfontein at year's end (see Section 1.e.).

The seven refugees who were arrested on related charges of high treason after being forcibly returned from Botswana in December 2003 remained in detention at year's end; their trial was scheduled for early 2005.

Citizens who were arrested arbitrarily used civil suits as legal recourse in many cases. In October, the High Court awarded damages of \$2,000 (NAD 12,000) to Luiza Lomba, a citizen who was detained as an illegal immigrant in 2000.

The case of Aurelio Samakupa Sondjamba, who filed damages against the Government after his 2002 release from prison after being held for 2 years without charge, was settled out of court during the year; Sondjamba was awarded compensation.

The 2002 civil suit filed by Anna Shingenge, who was detained by King Munkundi of the Ongandjera Traditional Authority for 7 months, was settled out of court under confidential terms.

There was no further information on the 2002 arrest of three persons who remained in detention at year's end for suspected involvement with the CLA.

A trial must take place within "a reasonable time," or the accused must be released. Human rights organizations have criticized the length of time that pretrial detainees were held, which has extended beyond 1 year in some cases (see Section 1.e.).

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the court system at times was inefficient. During the year, government and ruling party officials harshly criticized High Court Judge Elton Hoff.

The formal court system has 3 levels: 30 magistrates' courts; the High Court; and the Supreme Court. The latter also served as a court of appeals and as a constitutional review court.

The Constitution provides for the right to a fair trial with a presumption of innocence until proven guilty; however, this right was limited somewhat in practice by long delays in hearing cases in the regular courts and the uneven application of constitutional protections in the traditional system.

The lack of qualified magistrates and other court officials and the high cost of legal aid resulted in a serious backlog of criminal cases, which often translated into delays of up to 1 year or more between arrest and trial, contravening constitutional provisions for the right to a speedy trial. Some of those awaiting trial were incarcerated in the same conditions as those of convicted criminals.

During the year, procedural issues continued to dominate the high treason trial of 120 detainees arrested in connection with the 1999 attacks on government institutions at Katima Mulilo (see Section 1.d.). On February 24, High Court Judge Hoff ordered the release of 13 of the 120 detainees after ruling that the court did not have jurisdiction because of irregularities in their extradition from Botswana and Zambia. After their release, the 13 were rearrested on the same charges. The Government appealed the High Court's ruling to the Supreme Court, which overturned the decision on July 21. High Court criminal proceedings for all 120 suspects were initiated on August 23, subsequently postponed, and rescheduled to resume in January 2005.

During the year, the Government and ruling party officials harshly criticized Judge Hoff and his decision to release the 13 detainees. The Deputy Minister of Environment and Tourism called the Judge "disloyal and unpatriotic," and SWAPO Party Youth League Secretary Paulus Kapia denounced Hoff and the human rights organizations that defended him. The Law Society charged Ilonga and Kapia with contempt of court; however, no trial date had been set by year's end.

Most rural citizens first encountered the legal system through the traditional courts, which dealt with minor criminal offenses such as petty theft and infractions of local customs among members of the same ethnic group. The law delineates which offenses may be dealt with under the traditional system. The law defines the role, duties, and powers of traditional leaders and provides that customary law is invalid if it is inconsistent with provisions of the Constitution.

There were no reports of political prisoners.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution provides all citizens with the right to privacy and requires arresting officers to secure a judicial warrant before conducting a search, except in situations of national emergency; government authorities generally respected these rights in practice, and violations were subject to legal action.

Under the law, the NCIS is authorized to conduct wiretaps, intercept mail, and engage in other covert activities inside and outside the country to protect national security; however, wiretaps and covert surveillance required the consent of a judge.

### Section 2 Respect for Civil Liberties, Including:

#### a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, subject to reasonable restrictions in situations such as a state of emergency, and the Government generally respected these rights in practice; however, high level government officials sometimes responded to criticism of the Government and ruling party with verbal abuse. There also were reports of government pressure on reporters who worked for government owned media. The Government did not restrict academic freedom.

The Government contributed financially to the New Era newspaper and the Namibia Press Agency, both parastatals. The ruling SWAPO party owned one publication, Namibia Today. There were six independent newspapers. Reporters for independent newspapers continued to criticize the Government openly and did not engage in self censorship.

The Government owned and operated the Namibian Broadcasting Corporation (NBC) Radio and Television. NBC television and nine radio services that broadcast in English and indigenous languages were the most widely heard and influential media in the country. During the year, there were reports of government influence on NBC operations and editorial content as well as self censorship by the staff. There were nine private radio stations, one private television station, and a private cable and satellite television service that broadcast international news and entertainment programs. The ruling SWAPO party owned 51 percent of this cable service.

Government departments were precluded from advertising in The Namibian newspaper or purchasing it with state funds because of the newspaper's critical coverage of the President and the Government. Political parties, including the ruling SWAPO party, advertised in The Namibian.

During the year, high level government and ruling party officials sharply and publicly criticized journalists in response to perceived criticism of the Government or ruling party; however, there were fewer such incidents than in previous years. Such verbal attacks did not appear to have significantly affected the aggressive style of the independent media.

There were no restrictions on Internet access or use. There were growing numbers of domestic web pages, and the major newspapers had popular websites.

#### b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly and association, except in situations of national emergency, and the Government generally respected these rights in practice. Organizers of public meetings were required to obtain prior police approval, but many public gatherings took place without such approval and without interference by the Government.

Unlike in the previous year, security forces did not disperse demonstrations during the year.

#### c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, except in situations of national emergency, and the Government generally enforced these rights in practice.

The Constitution prohibits forced exile, and the Government did not use it.

The law provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol, and the Government has established a system for providing protection to refugees. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution, and granted refugee status or asylum; however, the Government required individual status determinations for asylum cases. The Government cooperated with the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees. The Government also provided temporary protection to certain individuals who may not qualify as refugees under the 1951 Convention/1967 Protocol.

At year's end, the population at the Osire Refugee Camp was approximately 10,000. Approximately 90 percent of this population was from Angola; the remaining refugees were from the Democratic Republic of the Congo, Burundi, Rwanda, and other African countries. During the year, 3,000 refugees voluntarily returned to Angola. The Government generally did not permit refugees and asylum seekers to work or live outside the Osire refugee camp. Education through grade 10 was available to all refugees at the camp, and the Government facilitated further secondary education for students with financial sponsorship at schools outside the camp. Some tension with local farmers persisted; farmers accused some refugees of stealing firewood, and refugees claimed they were not paid for informal labor.

The Government continued to maintain strict control over civilian access to the Osire refugee camp; however, the ICRC, the UNHCR, and the UNHCR's NGO partners had regular and unrestricted access to the camp.

Most of the approximately 1,000 Caprivi refugees--primarily Barakwena San--who in 2003 returned to the country from Botswana had assimilated into their communities by year's end.

In July, the Botswana Court of Appeal rejected the Government's appeal to have 13 alleged Caprivi secessionists extradited to face charges of murder and high treason. During the year, 2 of these individuals died of natural causes; the remaining 11 were being detained while the UNHCR reviewed their refugee claims.

#### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right during the year in presidential, parliamentary, regional, and local elections.

The Constitution establishes a bicameral Parliament and provides for general elections every 5 years and regional elections every 6 years. Members of the National Assembly are elected on a party list system on a proportional basis. National Council members are elected from within popularly elected Regional Councils.

Presidential and parliamentary elections were held on November 15 and 16. Hifikepunye Pohamba, SWAPO Party candidate and Minister of Lands, Resettlement, and Rehabilitation, was elected President with 76.4 percent of the vote; SWAPO won 55 of 72 elected National Assembly seats. International and domestic observers characterized both elections as free and reflecting the will of the electorate despite some irregularities. Observers criticized the inefficient vote tabulation system and the unequal access to media coverage and campaign financing. In the National Assembly, 6 opposition parties won a total of 17 seats: The Congress of Democrats Party, the Democratic Turnhalle Alliance, the United Democratic Front, the National United Democratic Organization, the Republican Party, and the Monitor Action Group. The inauguration of President-elect Pohamba and the National Assembly was scheduled for March 2005.

Legislation--including the 2003 Anti-Corruption Bill--and institutions--including the Office of the Ombudsman and the Office of the Auditor-General--were in place to combat public corruption; however, corruption and lack of transparency were growing problems. During the year, there were notable cases of malfeasance in several of the country's parastatals. Reports of corruption in the Airports Company, the Social Security Commission, and the Roads Authority received widespread media coverage. The Anti-Corruption Bill had not been implemented by year's end due to budgetary constraints.

No laws provided for public access to government information; however, the Government generally provided such access.

Women held 20 seats in the 78 seat National Assembly. There was a Women's Caucus in Parliament that reviewed legislation for gender sensitivity. There were 5 female ministers, including the Attorney General, and 5 female deputy ministers among the 45 ministerial and deputy ministerial positions.

Historic economic and educational disadvantages limited the participation of the indigenous San ethnic group in politics; however, a member of the San community represented the SWAPO party in the National Assembly. Virtually all of the country's other ethnic minorities were represented in Parliament and in senior positions in the Cabinet. Members of smaller ethnic groups held the offices of Prime Minister, Deputy Prime Minister, and Speaker of the National Assembly.

#### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases; however, high level government officials continued to use harsh language in response to NGO criticism of the ruling party and government policies. Government and ruling party officials continued to attack verbally human rights NGOs, including the National Society for Human Rights. For example, at a March 9 press conference, the Secretary of SWAPO's Youth League charged that the LAC, the National Society for Human Rights (NSHR), and the Society of Advocates were unpatriotic and "self-declared defenders of the enemies of the Namibian people." At a November 12 SWAPO rally, two Ohangwena regional councilors referred to the NSHR staff as "traitors." Despite verbal attacks, NGOs continued to criticize government policies freely.

During the year, representatives of international human rights organizations visited the country.

There was an autonomous ombudsman, with whom the Government cooperated.

#### Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution prohibits discrimination based on race, creed, gender, or religion, and specifically prohibits "the practice and ideology of apartheid"; however, the Government did not effectively enforce these prohibitions.

##### Women

Domestic violence against women, including beating and rape, was widespread. Traditional attitudes regarding the subordination of women exacerbated problems of sexual and domestic violence. Domestic violence is against the law, and the law defines rape in broad terms and allows for the prosecution of spousal rape. There continued to be significant attention paid to the problems of rape and domestic violence. In some Magistrate's Courts, there were special courtrooms to protect vulnerable witnesses from open testimony; the courtrooms featured a cubicle made of one way glass and child friendly waiting rooms.

Women and Child Protection Units, staffed with police officers trained to assist victims of sexual assault, were located in nine cities; during the year, the PEACE Center and other NGOs continued to provide training to these units. Police reported an increase in the number of women who reported rape and domestic violence.

The Constitution prohibits discrimination against women, including employment discrimination; however, men dominated positions in upper management. The Ministry of Labor and the Employment Equity Commission, which reports to the Minister of

Labor, were responsible for problems involving discrimination in employment; the Ministry of Women Affairs and Child Welfare was responsible for advocating for women's rights. The Ministry of Justice's Law Reform and Development Commission advocated for women's rights in legislation, such as the Maintenance Act. The law prohibits discriminatory practices against women married under civil law; however, women married under customary (traditional) law continued to face legal and cultural discrimination. Traditional practices that permitted family members to confiscate the property of deceased men from their widows and children still existed.

#### Children

The Constitution enumerates children's rights, including those in the area of education and health, and during the year, approximately 20 percent of government expenditures were designated for education and 15 percent for health care; however, in practice, resource constraints and untrained support staff resulted in inadequate attention to child welfare.

The Constitution provides children with the right to primary and junior secondary education (grades 1 to 10); however, the numerous fees, which included fees for uniforms, books, boarding costs, and school improvement, placed a heavy burden on students' families, and precluded some children from attending school. In general, more girls than boys were enrolled in secondary schools. Many San children did not attend school.

During the year, the Government took several steps to provide medical care and other assistance to the approximately 100,000 HIV/AIDS orphans and other vulnerable children.

Child abuse was a serious and increasingly acknowledged problem. The authorities vigorously prosecuted crimes against children, particularly rape and incest. The law protects children under 18 years of age by criminalizing sexual exploitation, child pornography, and child prostitution. The age of sexual consent was 16 years. During the year, the Government provided training for police officials to improve the handling of child sex abuse cases. Centers for abused women and children worked actively to reduce the trauma suffered by abused children.

There were a few reports of child prostitution, and parents as well as perpetrators were liable in such cases. For example, an investigation during the year into the disappearance of a 7th grade pupil at Narraville Primary School revealed that students as young as 11 and 12 were involved in sexual relations with older men; in some cases, parents seeking additional income reportedly had encouraged such activities. The school called an emergency meeting of the parents to address the issue, the State opened a charge sheet, and the Women and Child Protection Unit of the police initiated an investigation.

The growing number of HIV/AIDS orphans increased the vulnerability of children to sexual abuse and exploitation.

Child labor was a problem (see Section 6.d.).

#### Trafficking in Persons

The Prevention of Organized Crime Act, which was enacted in November, specifically prohibits trafficking in persons, and there were no reports of persons being trafficked to, from, or within the country. The law also prohibits slavery, kidnapping, forced labor, including forced prostitution, child labor, and alien smuggling. Traffickers were subject to fines of up to \$166,000 (NAD 1 million) or up to 50 years' imprisonment.

There were a few reports of child prostitution (see Section 5, Children).

#### Persons with Disabilities

While discrimination on the basis of disability is not addressed in the Constitution, the Labor Act prohibits discrimination against persons with disabilities in employment; however, enforcement in this area was ineffective. Although there was no legal discrimination against persons with disabilities, societal discrimination persisted. The Government legally does not require special access to public buildings for persons with disabilities, and some ministries remained inaccessible to them. Although some municipal governments have installed ramps and special curbing for persons with disabilities at street crossings, physical access for those with disabilities remained a problem. Disability issues continued to receive greater public attention than in previous years, with wider press coverage of the human rights problems that confront persons with disabilities. During the year, the Electoral Commission of Namibia took steps to accommodate voters with disabilities, including the provision of Braille templates for ballots in the presidential and national assembly elections.

#### National/Racial/Ethnic Minorities

Despite constitutional prohibitions, societal, racial, and ethnic discrimination persisted. Many nonwhites continued to complain that the Government was not moving quickly enough to provide education, health, housing, employment, and access to land. Some citizens continued to accuse the Government of providing more development assistance and professional opportunities to the majority Ovambo ethnic group. There also were reported cases of black farm workers suffering discrimination in remote areas at the hands of white farm owners.

## Indigenous People

The San, the country's earliest known inhabitants, historically have been exploited by other ethnic groups. By law, all indigenous groups participate equally in decisions affecting their lands, cultures, traditions, and allocations of natural resources; however, San and other indigenous citizens have been unable to exercise fully these rights as a result of minimal access to education, limited economic opportunities under colonial rule, and their relative isolation. The Government has taken measures to end societal discrimination against the San, including seeking their advice about proposed legislation on communally held lands and increasing their access to education; however, many San children did not attend school. In February, the LAC filed charges on behalf of 18 members of the San community against more than 20 communal farmers who allegedly beat them after accusing the San of stock theft; the case was pending at year's end. NGOs reported a decrease in complaints that San were unable to obtain proper and accurate identification documents.

The Government's authority to confer recognition or withhold it from traditional leaders, even in opposition to local preference, was controversial because of the leaders' influence on local events, including local police powers. In some cases, the Government withheld recognition from genuine traditional leaders for political reasons.

## Other Societal Abuses and Discrimination

On December 8, the Government signed into law a new Labor Act, which removed the previous law's protection of homosexuals from employment discrimination. During the year, senior government officials continued to make disparaging public remarks about homosexuals. For example, in a May 6 parliamentary debate, Justice Minister Albert Kawana called homosexuality "illegal and criminal."

## Section 6 Worker Rights

### a. The Right of Association

The Constitution provides for freedom of association, including freedom to form and join trade unions, and workers exercised this right in practice. A survey by trade unions indicated that approximately 140,000 of the 280,000 workers in the formal sector were unionized. Farm workers and domestic servants working on rural and remote farms often were ignorant of their rights, and unions experienced obstacles in attempting to organize these workers; as a result, they reportedly suffered abuse by employers. The law provides a process for employer recognition of trade unions and protection for members and organizers.

The law specifically protects both union organizers and striking workers from employer retaliation; however, the scarcity of judges and lack of expertise in labor law caused lengthy and unnecessary delays in such cases.

### b. The Right to Organize and Bargain Collectively

The law provides employees with the right to bargain individually or collectively and to recognize the exclusive collective bargaining power of the union when a majority of the workers were members of that union; workers exercised these rights in practice. Collective bargaining was not practiced widely outside the mining and construction industries, which had centralized, industry wide bargaining. Almost all collective bargaining was at the workplace and company level. The Ministry of Labor cited lack of information and basic negotiation skills as factors hampering workers' ability to bargain with employers successfully.

Except for workers providing essential services such as jobs related to public health and safety, workers have the right to strike once conciliation procedures are exhausted and 48 hour notice has been given to the employer and labor commissioner; legal strikes were conducted during the year. Under the law, strike action can be used only in disputes involving specific worker interests, such as pay raises. Disputes over worker rights, including dismissals, must be referred to a labor court for arbitration. The law protects workers engaged in legal strikes from unfair dismissal.

There are export processing zones (EPZs) at the Walvis Bay and Oshikango industrial parks and a number of single factory EPZs outside of these parks. The law applies to EPZs, and unions have been active in the EPZs since their establishment.

### c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children; however, there continued to be media reports during the year that farm workers (including some children on family owned commercial farms) and domestic workers often received inadequate compensation for their labor and were subject to strict control by employers. Given the Ministry of Labor's resource constraints, labor inspectors sometimes encountered problems in gaining access to the country's large, family owned, commercial farms to investigate possible labor code violations.

### d. Prohibition of Child Labor and Minimum Age for Employment

Criminal penalties and court orders were available to the Government to enforce child labor laws; however, such action involved



a complicated legal procedure, and child labor was a problem. Under the law, the minimum age for employment is 14 years, with higher age requirements for night work and in certain sectors such as mining and construction. Children below the age of 14 often worked on family owned commercial farms and in the informal sector, and some also worked in communal areas.

The Government has taken steps to end child labor abuses. During the year, the Ministry of Labor continued to hire additional inspectors, who used revised inspection checklists to include specific inquiries on International Labor Organization (ILO) Convention 182 concerns. The Ministry continued to work together to monitor abuses with ILO representatives, who visited the country during the year. The Government also continued to work with NGOs to assist the victims of child labor.

e. Acceptable Conditions of Work

There was no statutory minimum wage law; however, the mining, construction, and agricultural sectors set basic levels of pay through collective bargaining. However, a 2003 survey by the Namibian Farmworkers Union claimed that nearly 40 percent of 200 farms surveyed paid their workers less than minimum wage. In Windhoek's historically disadvantaged high population density areas, minimum wages for workers did not provide a decent standard of living for a worker and family. Wage levels for the less educated majority remained very low.

The standard legal workweek is 45 hours and required at least one 36 hour rest period per week. An employer may require no more than 10 hours per week of overtime. The new Labor Act mandates 24 workdays of annual leave per year, at least 30 workdays of sick leave over a 3-year period, and 3 months of maternity leave paid in part by the Social Security Commission. However, in practice, these provisions were not always observed or enforced rigorously by the Ministry of Labor.

The Government mandates occupational health and safety standards, and the Labor Act empowers the President to enforce these standards through inspections and criminal penalties. Labor laws generally were implemented efficiently; however, the Ministry of Labor still lacked an adequate number of trained inspectors to monitor adherence to such labor regulations as providing overtime pay and social security by some companies, especially small, family owned operations. The law requires employers to ensure the health, safety, and welfare of their employees. It provides employees with the right to remove themselves from dangerous work situations; however, some workers did not have this right in practice.

The law accords the same rights to legal foreign workers as to citizens.